

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ABDULIA AHMED BAABBAD,)	CV F 02 6643 OWW WMW HC
)	
Petitioner,)	FINDINGS AND RECOMMENDATION RE
)	MOTION TO DISMISS AND
v.)	ORDER REQUIRING PETITIONER TO
)	SERVE RESPONDENT WITH AMENDED
)	PETITION
GEORGE GALAZA, Warden,)	
)	
)	
Respondent.)	
_____)	

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On May 23, 2003, the court entered an order granting Petitioner's motion to withdraw claim number four, which was unexhausted, and granting Petitioner's motion to hold this petition in abeyance. The court further denied Petitioner's motion to amend his petition upon the exhaustion of claim four, explaining that such a motion was premature and could properly be raised after the claim was exhausted.

1 On May 13, 2004, Petitioner filed a "Notice of Exhaustion of State Court Remedies,"
2 providing the court with a copy of the order of the California Supreme Court entered April 28,
3 2004, denying his petition for writ of habeas corpus. Petitioner asserted in his Notice that claim
4 number 4 had been exhausted.

5 On November 22, 2004, the court issued an order granting Petitioner's request to amend
6 his petition and allowing him thirty days to do so. On February 8, 2005, the court issued an
7 order granting Petitioner a thirty-day extension of time to file his first amended petition. On
8 April 1, 2005, the court granted Petitioner another thirty-day extension of time to file his first
9 amended petition. On May 4, 2005, Petitioner filed his first amended petition.

10 On May 31, 2005, Petitioner's copy of the court's order of April 1, 2005, was returned by
11 the United States Postal Service as undeliverable. On May 19, 2005, Respondent filed a motion
12 to dismiss, contending that Petitioner had failed to file his first amended petition and had also
13 failed to keep the court apprised of his current address. On June 2, 2005, Petitioner filed a
14 Notice in response to Petitioner's motion. Petitioner stated that the court had placed an incorrect
15 CDC number on his copy of the court's order of April 1, 2005, which had prevented him from
16 receiving the order and caused it to be returned. On June 14, 2005, the court reserved Petitioner
17 with a copy of the order of April 1, 2005, which contained the correct CDC number for
18 Petitioner. That copy of the order was not returned.

19 The court finds that the return of the order of April 1, 2005, was caused by the court's
20 clerical error and not by a failure on the part of Petitioner to keep the court apprised of his
21 current address.

22 The court further finds that the proof of service attached to Petitioner's first amended
23 petition filed with the court on May 4, 2005, does not indicate that the first amended petition was
24 served on Respondent. This, of course, explains why Respondent is not aware that Petitioner
25 filed his first amended petition.

26 Accordingly, Petitioner is HEREBY ORDERED to serve Respondent with a copy of his
27 first amended petition within ten (10) days of the date of service of the present order.
28

Respondent is HEREBY GRANTED thirty days after receipt of Petitioner's first amended complaint to file a response.

In light of the above, IT IS HEREBY RECOMMENDED that the court deny Respondent's motion to dismiss.

IT IS SO ORDERED.

Dated: September 1, 2005
bl0dc4

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE